

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA, )  
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                                )  
                               )  
v.                            )      Criminal No: 09-CR-10330-GAO  
                               )  
**(1) STRYKER BIOTECH, LLC,** )  
**(2) MARK PHILIP,** )  
**(3) WILLIAM HEPPNER,** )  
**(4) DAVID ARD and** )  
**(5) JEFFREY WHITAKER,** )  
                               )  
Defendants.                  )  
                               )

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**ASSENTED-TO MOTION FOR AUTHORIZATION OF LIMITED  
RELEASE OF INDIVIDUALLY IDENTIFIABLE MEDICAL INFORMATION**

Defendant Stryker Biotech requests that this Court authorize a limited release of individually identifiable medical information currently subject to the Protective Order entered in this case for purposes of *The Estate of Michael Ludwick v. Stryker Corp. et al*, Law No. CL 113099, a litigation pending in state court in Iowa.

In support of this motion, Stryker Biotech states the following:

1. On November 24, 2009, upon consideration of the Government's Assented-To Motion for a Protective Order Regarding Individually Identifiable Medical Information, this Court entered a Protective Order requiring that individually identifiable medical information produced in this case be kept strictly confidential. Specifically, the Court's order provides that:

[A]ll parties shall keep individually identifiable patient information strictly confidential and shall not disclose that information to any person other than to the patient himself or herself; to the parties; to the parties' attorneys; to consultants, investigators, or experts providing professional services; to medical personnel who were involved in the patient's care and who may be witnesses and their attorneys; to potential witnesses; and to support or administrative staff working under the direction and supervision of any of the foregoing; as counsel of record deems necessary for preparation of the case and defense in this action, and such information shall be used only for purposes of this litigation including as necessary during discovery and preparation for trial, and unless a court orders otherwise for good cause shown; and . . . that at the conclusion of this litigation, including all appeals, all individually identifiable medical information shall be returned to the United States Attorney's Office, or destroyed at its direction[.]

2. Stryker Biotech is a defendant in a civil litigation currently pending in the Iowa District Court for Polk County, *The Estate of Michael Ludwick v. Stryker Corp. et al.*, Law No. CL 113099 (the “Ludwick case”). Judge Scott D. Rosenberg has ordered Stryker Biotech to comply with discovery requests by the Estate of Michael Ludwick that Stryker Biotech provide materials that have been produced in discovery in this matter, *U.S. v. Stryker Biotech, LLC et al.*, many of which contain individually identifiable medical information.

3. To date, Stryker Biotech has spent considerable time and resources redacting individually identifiable medical information from the requested documents before providing them to the parties in the Ludwick case, including the numerous medical records produced by the government in this case. However, given the large volume of electronic evidence in this case, in the form of computer hard drives that were produced in discovery, it would take many weeks and a huge sum of money to review all of the electronic evidence manually to ensure that all individually identifiable medical information is redacted. Although it is not expected that the hard drives of former Stryker Biotech employees contain extensive amounts of individually identifiable medical information, the existence of at least some such records can not be ruled out.

4. The parties in the Ludwick case have agreed to a Supplemental Protective Order that would expressly bind them by the terms of the Protective Order entered by this Court in *U.S. v. Stryker Biotech, LLC et al.*

5. All of the parties in this action have advised counsel that they assent to this motion.

WHEREFORE, Stryker Biotech respectfully requests that, contingent upon entry of the above-described Supplemental Protective Order in the Ludwick case, this Court authorize Stryker Biotech to release electronic evidence produced in discovery in this case, without redactions, to the parties in the Ludwick case to be used for purposes of that litigation only.

Respectfully submitted,

STRYKER BIOTECH, LLC

/s/ Joshua S. Levy

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June 21, 2011

**CERTIFICATE OF SERVICE**

I, Joshua S. Levy, certify that the within Assented-To Motion for Authorization of Limited Release of Individually Identifiable Medical Information was electronically filed on the 21st day of June, 2011 and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing ("NEF") and that paper copies will be sent to those indicated as non-registered participants on June 21, 2011.

/s/ Joshua S. Levy

Joshua S. Levy